



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 16, 1997

The Honorable Jill Cornelius
Matagorda County Attorney
1700 Seventh Street
Bay City, Texas 77414-5034

Letter Opinion No. 97-083

Re: Employee's use of an official vehicle
assigned to a district attorney's office (ID# 39509)

Dear Ms. Cornelius:

You have asked our opinion regarding a situation where two employees of the District Attorney ("DA") of Matagorda County commute to and from their residence to the district attorney's office in an official vehicle. The DA leases the vehicle for the use of the chief investigator, who may be called to investigate at any hour of the day. The chief investigator also is authorized to drive the vehicle daily to the DA's office. The chief investigator's residence is in Sargent, approximately twenty-five miles from the office in Bay City, Texas. The chief investigator's wife also works for the district attorney, and commutes with her husband daily to and from the DA's office in the official vehicle. You ask whether use of the official vehicle by the chief investigator's wife as a passenger is a violation of section 39.02 of the Penal Code or any other law which precludes the use of government property.

Section 39.02 of the Penal Code states in part that:

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment;
or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

Subsections (b) and (c) of section 39.02 classify the offense committed as a misdemeanor or a felony according to the value of the thing misused.¹

¹Under Penal Code section 39.01(2), "[m]isuse" means to deal with property contrary to: (A) an agreement under which the public servant holds the property; (B) a contract of employment or oath of office of a public servant; (C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or (D) a limited purpose for which the property is

(continued...)

You state that the vehicle is primarily assigned for use by the chief investigator, but other persons in the office may also use the vehicle for official purposes. Although the vehicle is authorized for the chief investigator's transportation for the precise distance as traveled by his wife, you believe his wife receives a "benefit" as a passenger in the vehicle because she is not required to expend her personal funds for transportation. You conclude, however, that the "additional cost to the county/state resulting from the additional weight of a passenger in the vehicle is *de minimus*."² The use of the vehicle by his wife as a passenger is merely incidental to its primary use by the chief investigator. We conclude that it is not a misuse of government property when the wife of a chief investigator for a district attorney, who is also an employee of the district attorney, commutes with her husband to and from the office and home in an official vehicle assigned to her husband.

S U M M A R Y

The wife of the chief investigator for the District Attorney of Matagorda County, who is also an employee of the district attorney, may ride as a passenger commuting to and from work in an official vehicle assigned to the chief investigator without it being considered a misuse of government property.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee

¹(...continued)
delivered or received."

²Penal Code section 39.02(d) states that "[a] discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section *due to the administrative difficulty and cost involved in recapturing the discount or award* for a governmental entity." (Emphasis added.)